

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT D. KLINE,

PLAINTIFF,

V.

**LARRY DEARMAN T/D/B/A
PRIORITY INSURANCE,
UNITED LIFE INSURANCE
COMPANY, LIFESHIELD
NATIONAL INSURANCE CO.,
INDEPENDENT INSURANCE
CONSULTANTS, INC., AND
MATTHEW PANZER,**

DEFENDANTS.

CASE NO.: _____

**NOTICE OF REMOVAL OF DEFENDANT
LIFESHIELD NATIONAL INSURANCE CO.**

Defendant LifeShield National Insurance Co. (“LifeShield”), pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 and with full reservation of all rights and defenses, hereby removes this action from the Court of Common Pleas of Mifflin County, Pennsylvania, Case No. CV-2018-01151, to the United States District Court for the Middle District of Pennsylvania. In support of this Notice of Removal, LifeShield states the following:

I. Background.

1. Robert D. Kline (“Kline”, or “Plaintiff”) commenced this lawsuit on September 27, 2018 in the Court of Common Pleas of Mifflin County Pennsylvania

(No. CV – 2018 – 01151) by Praecipe to Issue Writ of Summons against Defendants, Larry Dearman T/D/B/A Priority Insurance and Unified Life Insurance Company.

2. Plaintiff then filed a Praecipe for Writ and Writ to Join Additional Defendants Pursuant to PA. R.C.P. Rule 2252 on November 16, 2018, seeking to add LifeShield as a defendant, and on January 22, 2019 filed another Praecipe for Writ and Writ to Join Additional Defendants Pursuant to PA. R.C.P. Rule 2252, seeking to add Independent Insurance Consultants, Inc. and Matthew Panzer as defendants.¹

3. On January 22, 2019, Plaintiff served his complaint by U.S. Certified Mail on LifeShield alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. 227, *et seq.* (“TCPA”) (Count I), as well as claims for trespass to chattels (Count II) and invasion of privacy (Count III). A true and correct copy of the Complaint filed in the Mifflin County Court of Common Pleas, as well as all other papers filed in that action, is attached as Exhibit “A”.

4. Plaintiff alleges that on September 12, 2018 at 11:55 AM EST, he answered his cell phone and detected “dead air” and then a “blip” after which a female answered offering him health insurance. *See* Complaint at ¶ 27.

¹ As noted, the Plaintiff twice filed a “Praecipe for Writ to Join Additional Defendants Pursuant to PA. R.C.P. Rule 2252.” Though unclear, it appears that Plaintiff should have utilized Pennsylvania Rule of Civil Procedure 1033 to add defendants to the existing case, and therefore the manner utilized by Plaintiff may have been ineffective. In an abundance of caution, LifeShield is nevertheless providing notice of this removal to counsel for all parties the Plaintiff named or attempted to name as defendants in the

5. Plaintiff alleges as described in Count I of his Complaint that the Defendants have violated the TCPA. *See* Complaint at ¶ 35 & ¶ 36.

II. Basis for Jurisdiction.

6. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1331 and 1441. This claim could have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all civil actions arising under the “Constitution, laws or treaties of the United States.”

7. Specifically, Plaintiff’s claims arise under the Telephone Consumer Protection Act, 47 U.S.C. § 227.

8. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

9. Pursuant to 28 U.S.C. § 1441, any civil litigation of which the district courts have original jurisdiction based on a claim or right arising under the Constitution, treaties or laws of the United States is removable. This Court has federal question jurisdiction and this claim is removable to the United States District Court for the Middle District of Pennsylvania.

III. All Co-Defendants Consent and Will Join Removal.

10. The rule of unanimity requires that in order for a Notice of Removal to be properly before the court, all defendants who have been served or

Mifflin County case.

otherwise been properly joined in the action must either join in the removal or file a written consent to the removal.

11. LifeShield has contacted United Life Insurance Company, a named defendant in the Mifflin Court of Common Pleas action (No. CV–2018– 01151) which, through counsel, consents to and will join in this Notice of Removal.

12. Undersigned counsel has also contacted counsel for co-defendants Larry Dearman T/D/B/A Priority Insurance, Independent Insurance Consultants, Inc. & Matthew Panzer, which also consent to and will join in this Notice of Removal.

13. There is no indication on the docket for No. CV–2018– 01151 that any of the co-defendants joining this notice of removal has to date been properly served.

IV. Notice to Promptly Be Given.

14. Pursuant to 28. U.S.C. § 1446(d), notice of the filing of this Notice of Removal will be promptly served on the Plaintiff and counsel for all parties identified in the Mifflin County case (No. CV–2018–01151), and a copy will be promptly filed with the Prothonotary of the Court of Common Pleas of Mifflin County, Pennsylvania. A copy of the Notice of Filing of Notice of Removal to be filed with the Mifflin County Court of Common Pleas is attached hereto as Exhibit “B”.

V. Removal is Timely Filed.

15. LifeShield received by U.S. Certified Mail Plaintiff’s Summons

and Complaint on January 25, 2018.

16. This notice has been timely filed within thirty (30) days of LifeShield's receipt of the Complaint (January 25, 2019), and within one (1) year after commencement of action (September 27, 2018) as required by 28 U.S.C. § 1446(b).

VI. Pleadings and Process.

17. As required by 28 U.S.C. § 1446(a), LifeShield attaches copies of all state court process and pleadings filed in the Mifflin County lawsuit (No. CV–2018–01151) to this Notice of Removal. Copies of all process, pleadings and orders are included as part of Exhibit “A”.

VII. Venue.

18. Pursuant to 28 U.S.C. § 1441(a), venue in this district is proper because this action is currently pending in the Court of Common Pleas of Mifflin County, Pennsylvania, a court sitting within the Middle District of Pennsylvania.

VIII. Non-Waiver of Defenses.

19. Nothing in this Notice shall be interpreted as a waiver or relinquishment of LifeShield's right to assert any defense or affirmative matter, including without limitation a motion to dismiss pursuant to the Federal Rules of Civil Procedure.

WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, this Court has jurisdiction over this matter, and LifeShield hereby removes this action from the Court

of Common Pleas of Mifflin County, Pennsylvania to the United States District Court
for the Middle District of Pennsylvania.

Respectfully submitted,

BALABAN & COBLE

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Date: February 13, 2019

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Attorney for Defendant,

LifeShield National Insurance Co.

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**LARRY DEARMAN T/D/B/A
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CERTIFICATE OF SERVICE

The undersigned counsel for Defendant LifeShield National Insurance Co. hereby certifies that a true and correct copy of the foregoing document was served upon the following via first-class mail, postage pre-paid and/or email as indicated on this 13th day of February 2019.

By U.S. First-Class Mail

Robert D. Kline, J.D.
2256 Fairview Road
McClure, PA 17841

By U.S. First-Class Mail & Email

Ernesto Buitrago, Esquire
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Priority Insurance, Independence Insurance
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*Attorney for United Life Insurance
Company*

Respectfully submitted,

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